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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,351	02/23/2004	James L. Marsden	MEDZ 2 01140-2	2322
7590	08/18/2005		EXAMINER	
Thomas E. Kocovsky, Jr. FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114-2518			MYERS, ADAM C	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 08/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/784,351	MARDSEN ET AL.	
	Examiner	Art Unit	
	Adam C. Myers	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 May 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 5,11 and 13-30 is/are pending in the application.
 - 4a) Of the above claim(s) 5,11 and 13-15 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16-30 is/are rejected.
- 7) Claim(s) 26 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

The following action is in response to the communication filed May 31st, 2005.

Election/Restrictions

Applicant's election without traverse of Group III in the reply filed on May 31st, 2005 is acknowledged. In light of applicant's amendments to the claims of Group II and Group III, the restriction of these two groups is withdrawn, and the claims 16-18 will be examined with claims 19-30 as newly-amended claims with their respective dependencies to claims 19 and 30.

Claim Objections

Claim 26 is objected to because of the following informalities: the term "docontamination" appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16-26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann et al in view of Stiles. Gutzmann discloses an antimicrobial composition for cleaning and sanitizing meat products. This composition, comprising peroxydicarboxylic acids, of which peracetic acid is a species, is sprayed upon cooked sausage type foods. The sausage type food is one characterized by a ground meat filling stuffed into either an animal or synthetic casing. The limitation of claim 19 not immediately met by Gutzmann is that of decasing the sausage type food prior to spraying with the decontaminating fluid. The decasing technology is well known in the art, and Stiles teaches such a technology. In the disclosure, sausage is decased after cooking to produce a "skinless" sausage, one that is preferable to "skinned" sausage for its increased tenderness. This motivation would have made this addition to the invention of Gutzmann obvious to one of ordinary skill. In considering Gutzmann, additional motivation arises from the fact that spraying decased sausage would provide a greater amount of decontaminating solution to the meat itself, an area of greater microbial growth.

In regard to claim 20, Gutzmann discloses means for rinsing the decontaminating solution from the surface of the sausages (col. 14, lines 13-14).

In regard to claim 21, Gutzmann discloses means for applying dry heated air to the sausages after being sprayed with the decontaminating solution (col. 16, lines 54-59).

In regard to claim 22, Gutzmann discloses that the decontaminating solution has a concentration of at least 2 ppm of the peroxycarboxylic acid (col. 2, lines 31-32).

In regard to claim 23, as noted above, Gutzmann discloses that the decontaminating solution is contacted with the sausage via a spraying means.

In regard to claims 24 and 25, Gutzmann discloses that the decontaminating solution is sprayed onto the surface of the sausage type food for at least 30 seconds (col. 2, lines 60-61).

In regard to claim 26, Gutzmann does not disclose transporting means for passing the sausage type food past the decontamination spraying means. Stiles discloses an accelerator for transporting the sausages for a more efficient decasing process (col. 3-4). An accelerator as disclosed in Stiles would be an obvious addition by one of ordinary skill in the art to the disclosure of Gutzmann for the improved efficiency of the automatic process.

In regard to claim 16, Gutzmann discloses a chamber with spray nozzles for spraying the decontaminating solution, and a source of the decontaminating solution. A pump fluidly connected to the source is not disclosed, but Gutzmann does disclose that

the decontaminating spray exits the sprayer at 50 psi (col. 2, line 59), obviously implying that pumping means are a part of the disclosure of Gutzmann.

In regard to claim 29, Gutzmann discloses a chamber for the drying of the sausage type food (see above), and the obvious arguments for the conveying means apply to the instant claim 29 as per above.

In regard to claim 17, Gutzmann discloses a chamber with means for rinsing decontaminating solution from the surface of the sausage type food. A source of rinsing fluid is obvious, for without a source, rinsing would be impossible.

In regard to claim 30, the rejection for claim 19 is applicable. Applicant is advised that should claim 19 be found allowable, claim 30 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

In regard to claim 18, the means for spraying the decontaminating solution, along with the means for drying, have been disclosed by Gutzmann (see above).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann in view of Hwang. The disclosure of Gutzmann has been described above. The limitation not taught by Gutzmann is means for recirculation of the decontaminating solution. Recirculation systems are well known and obvious for the cost effective benefits such systems provide. Hwang discloses a cooking oven comprising a conveyed cooking means, the cooking means comprising a conveyor belt. As the belt

displaces food, a gaseous process steam cooks the food. The process steam is then recirculated within the cooking chamber. The belt is also subject to spray cleaning means when not displacing food. The spray cleaning means also employs recirculating means to conserve a cleaning solution disposed upon the belt. Given that Hwang has taught the well-known feature of recirculation at the time of the invention, it would have been obvious to one of ordinary skill in the art to recirculate the decontaminating solution.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann in view of Dallyn. Gutzmann has not disclosed means for aseptically packaging the food product after drying the food product. Dallyn teaches an invention for the sterilization of plastic containers for filling with sterile food. Gutzmann has disclosed the sterile (decontaminated) sausage type food, and it would have been obvious to package the sausage in a sterile (or otherwise decontaminated) package, for the obvious health benefits the sterile packaging would have over non-sterile packaging. The invention of Gutzmann seeks to apply similar technology to sausages, and this motivation is obviously advantageous when carried over to the packaging.

The examiner brings attention to the fact that an apparatus may only be limited by structural features of said apparatus. This implies that features of methodology or composition would not provide such limitations. In the case of applicant's invention, the concentration and contact time of the decontaminating solution relate to a composition and a method, respectively. The remarks presented above are provided to demonstrate

that these features are well known and obvious in the art, and have been rejected thusly.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Myers whose telephone number is 571-272-6466. The examiner can normally be reached on Monday-Friday, 8am-4: 30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

acm



KEITH HENDRICKS
PRIMARY EXAMINER